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UNF West, Inc. and Teamsters, Chauffeurs, Warehousemen, Industrial and Allied Workers of America, Local 166, International Brotherhood of Teamsters. Cases 21–CA–079406, 21–CA–081350, and 21–CA–089959

September 3, 2014

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HIROZAWA
AND JOHNSON

On April 24, 2014, Administrative Law Judge William L. Schmidt issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel filed an answering brief, and the Respondent filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge’s rulings, findings,¹ and conclusions and to adopt the recommended Order.²

¹ The Respondent has excepted only to the administrative law judge’s credibility findings. The Board’s established policy is not to overrule a judge’s credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the judge’s findings. Further, we reject the Respondent’s contention that the judge failed to assess the credibility of Supervisor Jeff Popovich. By expressly crediting employee Edgar Acosta’s testimony, which was contrary to Popovich’s, the judge discredited Popovich and resolved the conflict in the testimony. See *Electri-Flex Co. v. NLRB*, 570 F.2d 1327, 1331 (7th Cir. 1978) (*enfg.* 228 NLRB 847 (1977)); see also *Amber Foods, Inc.*, 338 NLRB 712, 713 *fn.* 7 (2002).

Member Johnson finds the resolution of the Edgar Acosta-Jeff Popovich credibility dispute by the judge troubling, because the structure of the judge’s opinion suggests that a dispositive adverse inference was drawn against Popovich’s testimony simply because former manager Mike Cusey did not testify (i.e., the judge seemed to reference Cusey’s absence as an “obvious tie-breaker”). However, the judge’s independent, positive reflections upon Acosta’s demeanor at trial, and thus his credibility, contrasts with his total lack of positive discussion concerning Popovich, or any discussion of him at all, except in the context of noting that the absence of former manager Cusey “seriously impaired” the employer’s factual account. Member Johnson does not believe the absence of Cusey should have had any effect on the case, as Popovich was present for the salient verbal exchange as well. However, the judge expressly credited Edgar over Popovich (ALJD at 3:33–35), and Respondent has not shown under a “clear preponderance” standard that that overall credibility determination was incorrect. Member Johnson thus agrees to adopt the judge’s credibility findings insofar as Edgar Acosta’s version of events was credited for specific demeanor-based reasons in one-on-one comparison with Supervisor Popovich’s

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, UNF West, Inc., Moreno Valley, California, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Dated, Washington, D.C. September 3, 2014

Mark Gaston Pearce, Chairman

Kent Y. Hirozawa, Member

Harry I. Johnson, III, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT coercively question you about your activities on behalf of Teamsters, Chauffeurs, Warehouse-

testimony. He would not rely on the judge’s findings to the extent they suggest an adverse inference should have been drawn against Popovich because former manager, Cusey, did not testify.

In addition, some of the Respondent’s exceptions imply that the judge’s rulings, findings, and conclusions demonstrate bias and prejudice. On careful examination of the judge’s decision and the entire record, we are satisfied that the Respondent’s contentions are without merit.

² We shall substitute a new notice in accordance with our decision in *Durham School Services*, 360 NLRB No. 85 (2014).

men, Industrial and Allied Workers of America, Local 166, International Brotherhood of Teamsters (Teamsters Local 166) or any other labor organization.

WE WILL NOT threaten you that it would be futile to select Teamsters Local 166 to represent you by stating that we would not negotiate or sign any contract with that union if you did.

WE WILL NOT threaten the loss of your 401(k) benefit or any other benefits if you select Teamsters Local 166 to represent you.

WE WILL NOT threaten you by telling you we are looking for a way to fire you because you engage in activities on behalf of Teamsters Local 166.

WE WILL NOT threaten you by suggesting that your working conditions will not improve until you quit complaining to Teamsters Local 166 and the National Labor Relations Board.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you for exercising the rights guaranteed by Section 7 of the Act.

UNF WEST, INC.

The Board's decision can be found at www.nlr.gov/case/21-CA079406 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.



Jean C. Libby, Esq., for the General Counsel.

Douglas M. Topolski, Esq. (Ogletree, Deakins, Nash, Smoak, and Stewart, P.C.), of Washington, DC; *Amy Pocklington, Esq. (McGuire Woods, LLP)*, of Richmond, Virginia; and *Jeffrey S. Shapiro, Esq., UNFI General Counsel*, of Providence, Rhode Island, for the Respondent.

William Y. Sheh, Esq. (Reich, Adell & Cvitan), of Los Angeles, California, for the Charging Party.

DECISION

STATEMENT OF THE CASE

WILLIAM L. SCHMIDT, Administrative Law Judge. Teamsters, Chauffeurs, Warehousemen, Industrial and Allied Workers of America, Local 166, International Brotherhood of Team-

sters (Teamsters Local 166, Union, or Charging Party) filed the unfair labor practice charges in Cases 21-CA-079406, 21-CA-081350, and 21-CA-089959 on April 24, May 18, and September 26, 2012, respectively.¹ The Acting Regional Director for Region 21 of the National Labor Relations Board (Board or NLRB) consolidated the first two cases and issued a consolidated complaint on December 12, 2012. Subsequently, the Regional Director consolidated all three cases and issued an amended consolidated complaint (complaint) on February 15, 2013. The complaint alleges that UNFI² engaged in conduct that violated Section 8(a)(1) of the National Labor Relations Act (Act).

The Regional Director originally consolidated this complaint for hearing with a post-election objections proceeding that grew out of the representation election conducted by the Region on May 17, 2012, at Respondent's Moreno Valley, California, facility, in Case 21-RC-078342. Teamsters Local 166 filed the petition in Case 21-RC-078342 on April 6, 2012, and the Regional Director approved a Stipulated Election Agreement on April 17 providing for a secret ballot election among the eligible employees in an appropriate unit comprised of the warehouse workers at that location. Approximately 259 employees were eligible to vote in the election. The Union lost by a margin of 152 to 88, with 1 challenged ballot.

The Union then filed timely objections to the conduct of the election. After an investigation, the Regional Director issued a Report on Objections on February 22, 2013, concluding that the Union's objection warranted a hearing. Accordingly, the Regional Director consolidated this unfair labor practice complaint and the objections proceeding for hearing before an administrative law judge. I conducted that hearing on April 2, 3, and 4, 2013, at Moreno Valley.

Subsequently, the Union filed a motion with me dated April 4, 2014, to sever and approve its request to withdraw its objections in Case 21-RC-078342, or in the alternative to sever and remand to the Regional Director for consideration of its request to withdraw the objections. After considering the responses to my April 4 Order to Show Cause, I granted the Union's request to sever and remanded Case 21-RC-078342, to the Regional Director for further action consistent with the Union's motion and the Board's Rules and Regulations.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, Respondent, and the Union, I make the following

FINDINGS OF FACT

I. JURISDICTION AND LABOR ORGANIZATION STATUS

Respondent, a California corporation with a facility in Moreno Valley, California, and throughout other locations in the United States, has been engaged in the nonretail distribution of natural, organic, and specialty foods at relevant times. During the 12-month period ending July 25, 2012, a representative

¹ Teamsters Local 166 amended each of the charges multiple times.

² At the hearing, the pleadings were amended to reflect this employer's correct corporate name, UNF West, Inc., hereafter Respondent or UNFI, its official tradename.

period, Respondent sold and shipped from its Moreno Valley facility goods valued in excess of \$50,000 directly to points outside the State of California. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Respondent also admits, and I find, that the Local 166 is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Credibility

The complaint contains five allegations that Respondent violated Section 8(a)(1) by the conduct of supervisors during engagements with two employees actively involved in the Teamsters Local 166 unsuccessful organizing effort in early 2012. Two of the three supervisors involved appeared and flatly denied the conduct attributed to them by the two employees, Edgar Acosta (Edgar) and his Uncle Sergio Acosta (Sergio), ever occurred. The General Counsel's case relies entirely on the credibility of the Acostas. For the reason set forth below, I found the Acostas' accounts more reliable and credible than those of the two supervisors, Jeff Popovich in Edgar's instance, and Javier Oliver in Sergio's instance.

In resolving the diametrically conflicting accounts, I recognize that the witnesses here are laden with obvious biases. But in the context of issues arising in the arena of labor relations law, that is almost the norm. Only rarely do truly independent observers appear to testify. In the course of this type of litigation, tie-breakers frequently emerge in the form of reliable documentary or video evidence, substantial and reliable corroboration, significant inconsistencies, or the like that tend to tip the scales to one side or the other. With perhaps a single exception, no obvious tie-breaker emerged in this litigation that would ease the task in deciding who told the truth and who did not.

Having considered Edgar's significant potential for bias based on the added fact that UNFI terminated him allegedly for low productivity in the middle of the organizing effort and the fact that his uncle was the leading employee organizer at the warehouse, I found his manner and tone while testifying amounted to an unusually restrained effort to respond to the questions asked without overt exaggeration that would suggest his answers had been tailored to suit his or his uncle's cause. He exhibited little outward hostility over the fact that he had been discharged by UNFI, did not appear argumentative while testifying, gave every indication that he listened carefully to the questions asked, and then answered courteously and forthrightly.

The Respondent called only Supervisor Popovich to respond to the incident involving Edgar. Popovich denied that it ever occurred or that he did what Edgar described as a predicate leading to the alleged unlawful interrogation by Shift Manager Cusey in Popovich's presence. Cusey no longer works for Respondent and has not since April or May 2012. Although Respondent solicited that fact during Popovich's testimony, it made no effort to explain his unavailability as a witness, or to otherwise explain why Cusey may have become an individual hostile to its defense of this allegation. By contrast, Respond-

ent called another manager long gone from its employ to address other issues present in the case at the time of the hearing.³

Counsel for the General Counsel's brief calls attention to this circumstance but makes no formal plea that I apply the "missing witness" rule, or draw an adverse inference from Respondent's failure to call Cusey or adequately explain his absence. Regardless, in measuring Edgar's impressive demeanor given his background against the Respondent's answering evidence obviously weakened by Cusey's absence, I find the failure to at least explain its efforts to obtain Cusey's testimony seriously impairs Respondent's case. It is one thing if the trier of fact has confidence that a party made sincere efforts to secure the testimony of the primary witness to an event; it is quite another if, as here, the trier of fact is not even apprised of the efforts made to secure a primary witness' testimony.

So in sizing Edgar from the appearance he made before me against the countering evidence provided by Respondent, I find his account reflects an honest rendition of an incident that occurred between him and Shift Manager Cusey in early February 2012.

Although Sergio's English language skills fall far short of his nephew, I found nothing in his demeanor that would cause me to question his truthfulness. In every respect he struck me as a sincere and humble person. Sergio also appeared to make no effort to exaggerate the incidents about which he testified. But my conclusion that Sergio's accounts should be credited over that of Maintenance Manager Oliver rests to a large degree on the fact that I have almost no confidence in the truthfulness of Oliver's pat answer denying the incidents at issue, explaining that he avoided speaking to Sergio at all because he knew him to be very pro-union worker. He repeated the same explanation when denying assertions made by another pro-union worker. Respondent's contentions that Oliver should be credited because he claimed to have never broken the law, had been trained on the dos and don'ts of an organizing campaign and was otherwise held in esteem by the others are offset by his hesitation to admit candidly that he did not believe the employees needed representation. I find that his conduct, as described by Sergio, consistent with his strongly held belief.

Accordingly, the accounts below are based on the credited testimony of the Acostas.

B. The Edgar Acosta Allegation

Complaint paragraph 6 alleges that UNFI Second-Shift Manager Mike Cusey and Lead Supervisor Jeff Popovich interrogated an employee about the employee's union membership, activities and sympathies and the union membership, activities, and sympathies of other employees in February 2012. The allegation pertains to an alleged verbal exchange that occurred in early February 2012.

Relevant facts. Edgar worked at UNFI Moreno Valley facility as an order picker from late April 2010 until early March 2012 when the Company terminated him for low production. He worked the second shift, normally scheduled for the period

³ The former manager Respondent called as a witness was Frank Manzano.

from 1 to 9:30 p.m. but he often worked longer hours, sometimes as many as 16 hours a day.

Along with his uncle and another UNFI worker, Edgar met with Teamster Organizer Ruben Luna just before the 2011 Christmas holiday season to discuss organizing the workers at the UNFI Moreno Valley warehouse. After that initial meeting, Edgar talked to coworkers about unionizing, informed the union about worker attitudes, distributed union cards, and attended the union meetings held for the UNFI workers.

In early February 2012, while Edgar spoke to Brian Redman, a fellow UNFI worker, about unionizing during their lunch break in the facility's breakroom. About 35 or 40 other workers were in the breakroom at the time but only two other employees were at the table with Edgar and Redman. While speaking with Redman, Edgar noticed Jeff Popovich, who supervised him from time to time, enter the break room, and walk around the area, and then pause for a "couple of seconds" by his table. After the pause, Popovich walked out of the breakroom without saying or doing anything. During Popovich's presence, Edgar continued to talk with Redman about the union in a normal tone of voice. Because he did not see Popovich stop at any other tables, he later came to suspect that Popovich may have been eavesdropping on his talk with Redman when he paused at their table.

The following day Mike Cusey, the second shift manager, summoned Edgar over the warehouse intercom to a conference in his office in the presence of Popovich. After the two supervisors greeted him, Cusey went "straight to the point." He told Edgar that he had heard "there's Union talk going around the warehouse" and asked if Edgar "knew or have heard anybody talking or trying to bring in the Union." Edgar 30'denied knowing anything about the subject. Cusey then told Edgar that if he heard anything like that or anyone talking about the union to please let him know. Edgar told him "okay" and then returned to his work.

Popovich flatly denied that he ever overheard or listened to a conversation in the breakroom between Edgar and Redman involving a discussion about the union. He also denied meeting with Edgar and Shift Manager Cusey in the latter's office when the shift manager questioned Edgar about union activity in the warehouse. Instead, Popovich claimed that the three met around March 9 in Cusey's office but this discussion involved only Edgar's low production record and his attitude, and that no discussion of the union activity occurred on this occasion. Instead, Popovich claimed that he knew nothing about any union organizing until a day or so before the Union filed the petition for an NLRB election when there was widespread discussion of this soon-to-be development throughout the warehouse.

Analysis and Conclusions. Counsel for the General Counsel's argument places heavy emphasis on the *Bourne* factors.⁴

⁴ The *Bourne* factors derive their name from a court opinion in *Bourne v. NLRB*, 332 F.2d 47, 48 (2d Cir. 1964). Those factors are:

(1) The background, i.e., is there a history of employer hostility and discrimination?

But for more than 30 years, the Board has said that it looks to the "totality of the circumstances" in determining the coercive nature of a supervisor's questioning of an employee about employee protected activities. *Rossmore House*, 269 NLRB 1176 (1984), affd. sub nom. *Hotel Employees Union Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985). Although the Board has frequently said that it is appropriate to consider the *Bourne* factors, it has also reminded its judges from time to time that the *Rossmore* analysis involves much more than a formalistic application of the *Bourne* factors. *Medcare Associates, Inc.*, 330 NLRB 935, 939-940 (2000), and the cases discussed there.

However, applying the *Bourne* factors to the credible evidence here leads to the conclusion that they overwhelmingly support the General Counsel's allegation based on the totality of circumstances standard. That evidence shows that the shift manager (apparently second in command locally after the warehouse general manager) summoned Edgar to his office over an intercom system (presumably overheard throughout the working floor) and commenced questioning the employee in the presence of another supervisor as to whether he knew of or heard anyone talking about the union, which the employee denied, and then instructed the employee to report back if he heard any such talk. For that alone, I credit the General Counsel with providing strong evidence in support of *Bourne* factors 2 through 5. And, based on the subsequent hostility Respondent demonstrated toward employee union activity, the General Counsel arguably gets the edge even with respect to *Bourne* factor 1.

In short, I find that Cusey's questioning interfered with, and coerced Edgar in his exercise of Section 7 rights by summoning the employee to his office and interrogating him about union talk around the warehouse and instructing him to report union talk he may hear in the future. See *Swan Coal Co.*, 271 NLRB 862, 864 (1984). Accordingly, I conclude Respondent violated Section 8(a)(1), as alleged, by this early February 2012 conduct of Cusey.

C. The Sergio Acosta Allegations

Complaint paragraphs 7(a) through (d) pertain to unlawful statements Maintenance Manager Javier Oliver allegedly made to employees in two separate time frames, two in early May 2012, and two in mid-October 2012. Based on the evidence presented by the General Counsel, these four complaint allegations pertain to statements Oliver made to Sergio.

Relevant facts: Sergio initiated contact with Teamsters Local 166 that eventually led to its organizing drive at the UNFI warehouse in Moreno Valley and the NLRB representation election held there on May 17. He was widely recognized as the most active employee organizer throughout and served as

(2) The nature of the information sought, e.g., did the interrogator appear to be seeking information on which to base taking action against individual employees?

(3) The identity of the questioner, i.e., how high was he in the company hierarchy?

(4) Place and method of interrogation, e.g., was employee called from work to the boss's office? Was there an atmosphere of unnatural formality?

(5) Truthfulness of the reply.

the Union's observer at the election. Even Maintenance Manager Oliver was well aware of Sergio's support for the Union.

On May 2, while working alone in the warehouse aisles, Oliver approached Sergio to ostensibly ask a work-related question for which Sergio had no answer. Before walking away, Oliver told Sergio that UNFI would not negotiate or sign any contract with the Union and that they do not "want to know anything about the Union."

The next day Oliver approached Sergio again supposedly to speak with him about some broken pallets. After that brief discussion, Oliver told Sergio that if the employees voted for the union they would lose their 401(k) benefit, and that they would lose everything.

On October 12, Oliver approached Sergio at his work location in one of the warehouse isles to ask whether Frank Manzano, the warehouse manager at the time, had spoken to him about transferring to the maintenance department. Sergio acknowledged that he had met with Manzano but he told Oliver that they had spoken only about a recent write-up he received rather than a transfer. Oliver then warned Sergio to be careful because when the supervisors and managers held closed door meetings they were looking for a way to fire him.

About a week later, Eddie Ochoa, a leadman in the maintenance department, stopped to speak with Sergio at his work location in one of the warehouse aisles. During their exchange, Sergio related an emotional story about his young daughter. He told Ochoa that the little girl, after overhearing a discussion between Sergio and his wife about his troubles at work in the warehouse, told him that when she grew up she would take him away from working in the warehouse for the company. Ochoa sympathized with Sergio's story briefly and then left.

Shortly afterward, Oliver summoned Sergio to the maintenance office. When Sergio arrived, Ochoa was in the office with Oliver but soon left.⁵ Oliver then asked Sergio what was wrong. Sergio recounted the story about what his young daughter had said to him. Oliver too expressed sympathy but then he told Sergio that the solution was to "[s]top complaining to the Labor Board and the Union." Sergio responded by saying that he only wanted someone to represent him. To that, Oliver responded only by saying, "Well, I already gave you the solution." Sergio said nothing further and returned to work.

Analysis and Conclusions: Both of Oliver's statements to Sergio in May violated the Act. His warnings on successive days that UNFI would not negotiate or enter into an agreement with the union, and that the employees would lose their 401(k) plan as well as other benefits amounted to the type of classic threats the Board finds unlawful. Telling employees that the employer will not honor its statutory obligation to bargain if the employees choose to unionize interferes with the Section 7 right of employees to bargain through a chosen representative. As Oliver's conduct sought to persuade Sergio that it would be futile for employees to select a union and warns that engaging in activity protected by Section 7 might even place existing benefits in jeopardy, I have concluded that his conduct violated

Section 8(a)(1) as alleged. *Taylor Chair Co.*, 292 NLRB 658, 662 (1989).

Oliver gave another double-barreled warning to Sergio in October. Although his initial statement to Sergio that the managers and supervisors were seeking to find a way to fire him, stripped of all context, is arguably ambiguous, Oliver removed any ambiguity a week later by seizing the occasion to tell Sergio that the solution to his work place problems was to quit complaining to the Union and the Labor Board. This evidence provides strong support for the conclusion that at least some of the UNFI managers continued to harbor animus toward Sergio's union activity 5 months after management's lopsided victory at the May 17 election. Accordingly, I find Oliver's warnings to Sergio in October violated Section 8(a)(1) as alleged.

CONCLUSIONS OF LAW

By coercively questioning an employee; by warning an employee that it would not negotiate or sign any contract with the Union; by warning an employee that all workers could lose benefits if they selected union representation; by warning an employee that management was looking for a way to fire him; and by impliedly warning an employee that his working conditions would not improve unless he stopped complaining to the Union and to the Labor Board, UNFI engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent engaged in certain unfair labor practices, my recommended order requires UNFI to cease and desist and to take affirmative action designed to effectuate the policies of the Act. The affirmative action requires UNFI to post the notice attached as the "Appendix" at its Moreno Valley, California, warehouse.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁶

ORDER

The Respondent, UNF West, Inc., Moreno Valley, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Coercively questioning employees concerning their activities on behalf of Teamsters, Chauffeurs, Warehousemen, Industrial and Allied Workers of America, Local 166, International Brotherhood of Teamsters (Teamsters Local 166) or any other labor organization.

(b) Threatening employees by telling them that it would be futile to select representation by Teamsters Local 166 because it would not negotiate or sign any contract if that happened.

(c) Threatening employees with the potential loss of their 401(k) and other benefits if they selected Teamsters Local 166 to represent them.

⁵ Ochoa, who was described as a lead person in the maintenance department, did not testify.

⁶ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(d) Threatening employees who engage in activities on behalf of Teamsters Local 166 by telling them that management is looking for a way to fire them.

(e) Threatening employees by telling them that their working conditions would not improve until they quit complaining to Teamsters Local 166 and the National Labor Relations Board.

(f) In any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at its warehouse facility in Moreno Valley, California, copies of the attached notice marked "Appendix"⁷ in both English and Spanish. Copies of the notice, on forms provided by the Regional Director for Region 21 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 1, 2012.

(b) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

⁷ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Dated, Washington, D.C. April 24, 2014

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT coercively question you about your activities on behalf of Teamsters, Chauffeurs, Warehousemen, Industrial and Allied Workers of America, Local 166, International Brotherhood of Teamsters (Teamsters Local 166) or any other labor organization.

WE WILL NOT threaten you that it would be futile to select Teamsters Local 166 to represent you by stating that we would not negotiate or sign any contract with that union if you did.

WE WILL NOT threaten the loss of your 401(k) benefit or any other benefits if you select Teamsters Local 166 to represent you.

WE WILL NOT threaten you by telling you we are looking for a way to fire you because you engage in activities on behalf of Teamsters Local 166.

WE WILL NOT threaten you by suggesting that your working conditions will not improve until you quit complaining to Teamsters Local 166, and the National Labor Relations Board.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you for exercising the rights guaranteed by Section 7 of the Act.

UNF WEST, INC.